REMARKS

Claims 1-7 and 9-20 are pending[1]. Claim 1 has been amended. Claim 8 was cancelled without prejudice to or disclaimer of the underlying subject matter in the response filed on September 19, 2005. New claim 21 has been added. Support for the new and amended claim can be found throughout the specification and claims as originally filed, for example, in the Specification at page 9, line 20 through page 10, line 8. No new matter enters by way of this amendment. Upon entry of the foregoing, claims 1-7 and 9-21 will be pending.

I. Information Disclosure Statement

Applicants acknowledge and thank the Examiner for the signed copies of the 1449s filed September 19, 2005 and October 12, 2005 included with the instant Office Action.

Applicants also respectfully request Examiner initialed copies of the PTO form 1449s filed on May 17, 2005, October 21, 2005, and November 22, 2005 for their records.

II. Rejection under 35 U.S.C. §102

Claims 1-3, 7-13, and 17-20 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by WO 98/53083. The Examiner asserts that:

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[1] Although the Office indicates that claims 1-20 are pending, Applicant notes that claim 8 was cancelled without prejudice to or disclaimer of the underlying subject matter in the response filed on September 19, 2005. The Final Action states that "[t]he amendment filed September 19, 2005 has been entered." Final Action at page 2.

> WO 98/53083 teaches a nucleic acid molecule comprising a polypeptide encoding sequence of ACC oxidase and a gene suppression sequence having an inverted repeat of a 5' untranslated region (UTR) (page 7) and is at least 21 nucleotides long (page 9) and transformed into a plant, wherein gene suppression is severe (page 15).

Office Action at page 2.

Applicants respectfully submit that the nucleic acid molecule disclosed in the WO 98/53083 reference fails to disclose all of the limitations of the present claims. "It is axiomatic that for prior art to anticipate under § 102 it has to meet every element of the claimed invention." *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986). Whatever else, WO 98/53083 does disclose it does not disclose, or even suggest that transcription of the nucleic acid molecule results in the simultaneous expression of a polypeptide by a polypeptide encoding sequence and suppression of a different gene in a host cell or a nucleic acid molecule comprising a first nucleic acid segment comprising a polypeptide encoding sequence and a second nucleic acid segment comprising a gene suppression sequence where the first and said second nucleic acid segments are obtained from different genes. Absent a showing of each and every element of the claims, the reference cited by the Examiner does not anticipate claims 1-3, 7-13, and 17-20.

Accordingly, for at least the foregoing reasons, the rejection of claims 1-3, 7-13, and 17-20 under 35 U.S.C. § 102(b) is improper. Reconsideration and withdrawal of this rejection is respectfully requested.

III. Rejection under 35 U.S.C. § 103

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over WO 98/53083, taken in combination with Helliwell *et al.* (US 2003/0049835). Office Action at pages 2-3.

This rejection is respectfully traversed for at least the reasons which follow. Applicants respectfully submit that the cited references do not teach or suggest all of the claim limitations. As discussed, WO 98/53083, at a minimum, does not disclose or suggest that transcription of the nucleic acid molecule results in the simultaneous expression of a polypeptide by a polypeptide encoding sequence and suppression of a different gene in a host cell or a nucleic acid molecule comprising a first nucleic acid segment comprising a polypeptide encoding sequence and a second nucleic acid segment comprising a gene suppression sequence where the first and said second nucleic acid segments are obtained from different genes.

Helliwell *et al.* does not make up what WO 98/53083 lacks. The Examiner argues that Helliwell *et al.* teaches "that intron containing dsRNA increases the efficiency of gene silencing" Office Action dated May 19, 2005 at page 3. Assuming, *arguendo*, that Helliwell discloses "that intron containing dsRNA increases the efficiency of gene silencing," Applicants submit that the Examiner has not pointed to any language in Helliwell *et al.* that discusses that transcription of the nucleic acid molecule results in the simultaneous expression of a polypeptide by a polypeptide encoding sequence and suppression of a different gene in a host cell. As such, even the combination of references cited by the Examiner do not render the claimed invention obvious.

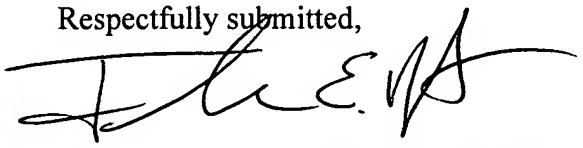
In sum, the Examiner fails to present a *prima facie* case of obviousness as the cited references fail to teach or suggest all of the claim limitations. For at least these reasons, the Applicant respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness, as required by 35 U.S.C. § 103.

Accordingly, for at least the foregoing reasons, the rejection of claims 1-20 under 35 U.S.C. § 103 is improper. Reconsideration and withdrawal of this rejection are respectfully requested.

Conclusion

In view of the above, each of the presently pending claims is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims, and to pass this application to issue. The Examiner is encouraged to contact the undersigned at (202) 942-5085 should any additional information be necessary for allowance.

Respectfully submitted,



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